

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES

Hewlett-Packard Company

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Hewlett-Packard Company (hereinafter “Vendor”), with its principal place of business at 3000 Hanover Street, Palo Alto, California 94304.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-149, on December 3, 2009, for Hewlett-Packard Branded Products and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-149 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Customer Agreement for Vendor Software Licensing and Software and Hardware Support; Appendix E, Master Lease Agreement; Negotiated and Agreed Customer Statements of Work, Exhibit 1, Vendor’s Response to RFO DIR-SDD-TMP-149, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-149, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Negotiated and Agreed Customer Statements of Work, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend

the Contract, upon mutual agreement, for up to three (3) optional one-year terms.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to products indicated in Appendix C – Pricing and Product Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

B. Services

Services available under this Contract are limited to installation, warranty, maintenance and support, and product training. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

A. Manufacturer's Suggested Retail Price (MSRP)

MSRP is defined as the product sales price suggested by the manufacturer or publisher of a product.

B. Customer Discount

The minimum Customer discount for all products and services will be the percentage off MSRP as specified in Appendix C – Pricing and Product Index.

Customer Discount includes the DIR administrative Fee specified in Section 5.

C. Customer Price

1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

3) Both parties intend to agree to incorporate a revised version of the following term into this contract by an Amendment no later than Friday, May 14, 2010 or this contract will terminate on May 14, 2010. *"If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and*

services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This Contract shall be amended within ten (10) business days to reflect the lower price.”

D. DIR Administrative Fee

The administrative fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

E. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

F. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

G. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

H. Changes to Prices

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is one-half of one percent (.50%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$500.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Sherri Parks, Director
Contracting & Procurement Services
Department of Information Resources
300 West 15th Street, Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759
Email: sherri.parks@dir.state.tx.us

If sent to the Vendor:

Hewlett-Packard Company
Judith M. Alexander, Esq.
Public Sector Legal Counsel
1445 Compaq Center Drive West
Houston, TX 77070-1433
Phone: (281) 370-0670
Facsimile: 281-926-7140
Email: Judith.alexander@hp.com

7. Software License and Service Agreements

A. Software License Agreement

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the Software License Agreement set forth in Appendix D of this Contract. No changes to the Software License Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix C. Order Fulfiller shall make the Software License Agreement terms and conditions available to all Customers at all times.

2) Compliance with the Software License Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Software License Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Software

License Agreement terms and conditions.

B. Shrink/Click-wrap License Agreement

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor for HP Branded software. Any purchases of third party software shall be subject to the third party's license terms. **It is the Customer's responsibility to read the third party Shrink/Click-wrap License Agreement and determine if the Customer accepts the third party license terms. Customers are bound by, and will abide by such third party Shrink/click-wrap License terms unless Customer does not agree with the license terms, then Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the third party software publisher, which the parties shall agree to in writing.**

C. Service Agreement

Services provided under this Contract shall be in accordance with the Service Agreement as set forth in Appendix D of this Contract. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

8. Intellectual Property Matters

A. Definitions

1. "Work Product" or "Deliverables" means any and all Deliverables produced by or resulting from Vendor's performance of Services for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible items or things that will be prepared, created, or developed following the effective date of the Contract.

2. "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

3. "Statement of Work" means a document signed by Customer and Vendor describing a specific set of Services, and/or Work Product and/or Intellectual Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.
4. "Third Party IP" means the Intellectual Property Rights of any third party not a party to this Contract.
5. "Vendor IP" means, as between Vendor and Customer, Vendor's ownership of all materials, software (whether written or machine-readable) and the copyrights, patents, trademarks, trade secrets and all other Intellectual Property Rights (a) owned by or licensed to Vendor or one of its Affiliates prior to the Effective Date of the Contract; (b) all Intellectual Property Rights developed by Vendor or one of its Affiliates outside the scope of this Contract, and (c) all modifications, enhancements, and derivative works thereof.
6. "Affiliate" of a party means an entity controlling, controlled by, or under common control with, that party.
7. "Transaction Document(s)" means an accepted Customer Purchase Order (excluding pre-printed terms) and in relation to that order valid Vendor quotations, Vendor published technical data sheets or service descriptions, Vendor limited warranty statements delivered with or otherwise made available to Customer with Products, and mutually executed Statements of Work, all as provided by Vendor, or other mutually executed documents that reference this Contract.

B. Ownership.

1) Deliverables. As between Vendor and Customer, all materials developed by Vendor under this Contract and specifically identified as a Deliverable in the relevant Transaction Document shall be identified as one of the following Deliverable designations ("Deliverable Type") in such Transaction Document and the rights and licenses shall be as follows with respect to each Deliverable Type. Where no Deliverable Type has been designated in the applicable Statement of Work, the Deliverable Type shall be considered a Type I Deliverable. Customer will not disassemble or decompile any software Deliverable without Vendor's written consent. Notwithstanding the license grants set forth in this Section 8.B, any third party software incorporated into any licensed Deliverable will be subject to the license terms applicable to such software. The parties acknowledges that they do not intend to be a joint authors of the Intellectual Property within the meaning of the Copyright Act of 1976. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as set forth in a Statement of Work or in the Work Product.

(a) Type I Deliverables: Vendor shall retain all IPR in Deliverables designated as Type I. Vendor grants to Customer a worldwide, non-exclusive, fully paid, royalty-free license to use, execute, display, execute, reproduce, and distribute copies of such

Deliverables for its internal use only (including a license of the same scope to Vendor IP included in such Deliverable so long as such Vendor IP is necessary for the intended use of the Deliverable). Customer's license confers no title or ownership in the Deliverable and no rights in any associated source code. Vendor will deliver one copy of the specified Type I Deliverable to Customer.

(b) Type II Deliverables: Subject to Vendor's retention of its ownership rights in Vendor IP, Vendor hereby assigns to Customer the copyright in Deliverables designated as Type II Deliverables. Vendor retains all other Intellectual Property Rights in such Deliverables. Vendor grants to Customer a worldwide, non-exclusive, fully paid, royalty-free license to use, display, execute, reproduce, and distribute copies of Vendor IP included in such Deliverable for its internal use only, to the extent necessary for the intended use of the Deliverables. Vendor may retain one copy of the Type II Deliverables. Customer grants Vendor a worldwide, non-exclusive, fully paid, royalty-free, irrevocable license, including the right to grant sublicenses, to use, execute, reproduce, distribute copies of, display, perform, and create derivative works based upon Type II Deliverables.

2) Residuals. Notwithstanding anything in this Contract to the contrary, each party shall be free to use Residuals (as defined below) for any purpose provided that the party seeking to use Residuals did not know at the time of such use that the Residuals were the Confidential Information of the other party. "Residuals" means information that is received or developed under this Contract and retained in the unaided memory of one or more employees who have had access to the information. The parties agree that the right to use Residuals shall not be deemed to grant either party any license under the other party's copyrights or patents.

3) Prior Intellectual Property Rights. All copyrights, patents, trademarks, trade secrets, and any other Intellectual Property Rights existing prior to the Effective Date of the relevant Transaction Document shall belong to the party that owned such rights immediately prior to the Effective Date.

4) Effect of Termination of Licenses. Vendor may terminate Customer's license in the Deliverables upon notice for failure to comply with the terms of this Contract. In the event of termination of Customer's license, Customer will immediately destroy or return to Vendor the affected Deliverables and all partial or complete copies thereof, or provide satisfactory evidence of their destruction to Vendor.

5) No rights in copyright, patents, trademarks, trade secrets, or other Intellectual Property are granted by either party to the other except as expressly provided under this Contract.

C. Further Actions.

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of applicable Intellectual Property Rights in the

Work Product to Customer, including but not limited to the execution, acknowledgement and delivery of such further documents in a form agreed by the parties.

D. Waiver of Moral Rights.

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

E. Confidentiality.

In the performance of the Services hereunder, either party may receive or have access to documents, technical information, information about product plans and strategies, promotions, customers, and related technical, financial or business information, which the disclosing party considers to be the confidential information of that party or its third party contractors or suppliers ("Confidential Information"). The following will apply to any such Confidential Information to the extent consistent with the Texas Public Information Act and its trade secret exemptions:

- (1) Before any Confidential Information is disclosed, the parties will first agree to disclose and receive such information in confidence. If then disclosed, the Confidential Information will be marked as confidential at the time of disclosure, or if disclosed orally but stated to be confidential, will be designated as confidential in a writing by the disclosing party summarizing the Confidential Information disclosed and sent to the receiving party within thirty (30) days after such oral disclosure;
- (2) Confidential Information may be used by the receiving party only with respect to the performance of its obligations under this Contract, and only by the employees or contractors of the receiving party and its employees, agents or contractors who have a need to know such information for purposes of this Contract. The receiving party will protect, and will ensure that its employees, agents and contractors will protect, the disclosed Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as the receiving party uses to protect its own confidential information of a like nature;
- (3) The receiving party's confidentiality obligation will be for a period of three (3) years after the date of disclosure.
- (4) The confidentiality obligations of the parties will not extend to information that:

- (a) was in the receiving party's possession before receipt from the disclosing party;
- (b) is or becomes publicly known without breach by the receiving party;
- (c) is rightfully received by the receiving party from a third party without a duty of confidentiality;
- (d) is independently developed or learned by the receiving party;
- (e) is disclosed by the receiving party with the disclosing party's prior written approval; or
- (f) is required to be disclosed pursuant to the Texas Public Information Act and its trade secret exemptions.

F. Injunctive Relief.

The Contract is intended to protect both parties' proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to the non breaching party. Therefore, to the extent authorized by Texas Law and Constitution, both parties' acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by non breaching party, without requiring proof of irreparable injury as same should be presumed.

G. Return of Materials Pertaining to Work Product.

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor, including all materials embodying the Work Product, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete for which the Customer has paid, and any other documents or Confidential Information furnished by Customer to Vendor. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertains to the Work Product.

H. Vendor License to Use.

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

I. Third-Party Underlying and Derivative Works.

To the extent that any Vendor IP or Third Party IP is embodied or reflected in the Work Product, or is necessary to provide the Services, it will be addressed in the Customer Statement of Work. Vendor agrees to notify Customer on delivery of the Work Product

or Services if such materials include any Third Party IP. On request, Vendor shall provide Customer with documentation indicating a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product.

J. Agreement with Subcontracts.

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Sample subcontract agreements will be provided to the Customer promptly upon request.

K. License to Customer.

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

L. Vendor Development Rights.

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

9. Authorized Exceptions to Contract for Deliverables-Based Information Technology Service Standard Terms and Conditions.

A. Section 1. Introduction, C. Order of Precedence. Appendix E. Master Lease Agreement is hereby amended as follows: Both parties intend to agree to incorporate a final, negotiated version of the Master Lease Agreement into this Contract by an Amendment no later than Friday, May 14, 2010 or this contract will terminate on May 14, 2010.

B. Section 8. Intellectual Property Matters, D. Waiver of Moral Rights is hereby is hereby replaced in its entirety as follows: Both parties intend to agree to incorporate a revised version of the following term into this Contract by an Amendment no later than Friday, May 14, 2010 or this contract will terminate on May 14, 2010. *"Vendor hereby*

irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right."

C. Section 8, Intellectual Property Matters, I. Third-Party Underlying and Derivative Works is hereby replaced in its entirety as follows: Both parties intend to agree to incorporate a revised version of the following term into this Contract by an Amendment no later than Friday, May 14, 2010 or this contract will terminate on May 14, 2010. *"To the extent that any Vendor IP or Third Party IP is embodied or reflected in the Work Product, or is necessary to provide the Services, it will be addressed in the Customer Statement of Work. Vendor agrees to notify Customer on delivery of the Work Product or Services if such materials include any Third Party IP. On request, Vendor shall provide Customer with documentation indicating a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product."*

10. Authorized Exceptions to Appendix A, Deliverables-Based Information Technology Service Standard Terms and Conditions.

A. Section 3. Definitions is hereby amended to add the following:

- H. Affiliate** of a party means an entity controlling, controlled by, or under common control with, that party.
- I. HP Branded** means Products and Services bearing a trademark or service mark of Hewlett-Packard Company or any Hewlett-Packard Company Affiliate.
- J. HP Business Partner** means select companies authorized by HP to promote, market support, and deliver certain Products and Services.
- K. Product** means hardware and software listed in HP's standard price list at the time of HP's acceptance of Customer Purchase Order, and including products that are modified, altered, or customized to meet Customer requirements ("Custom Products").
- L.** Both parties intend to agree to incorporate a revised version of the following term into this Contract by an Amendment no later than Friday, May 14, 2010 or this contract will terminate on May 14, 2010. *"**Technical Service** means consulting integration, or technical services performed by HP under a Statement of Work or*

other Transaction Document.”

- M.** Both parties intend to agree to incorporate a revised version of the following term into this contract by an Amendment no later than Friday, May 14, 2010 or this contract will terminate on May 14, 2010. “**Service means Support and Technical Services.**”
- N. Specification** means technical information about Products published in HP Product manuals, user documentation, and technical data sheets in effect on the date HP delivers Products to Customer.
- O. Support** means hardware maintenance and repair, software maintenance, training, installation and configuration, and other standard support services provided by HP and includes “Custom Support” which is any agreed non-standard Support as described in a Statement of Work.
- P. Transaction Document(s)** means an accepted Customer Purchase Order (excluding pre-printed terms) and in relation to that Purchase Order valid HP quotations, HP published technical data sheets or service descriptions, HP limited warranty statements delivered with or otherwise made available to Customer with Products, and mutually executed Statements of Work, all as provided by HP, or other mutually executed documents that reference this Contract.
- Q. Contractor** means Hewlett-Packard Company.
- B. Section 4. General Provisions, A. Entire Agreement** is hereby replaced in its entirety as follows:
- The documents set forth in Contract section 1.C (Order of Precedence) constitute the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract documents.
- C. Section 4. General Provisions, B. Modification of Contract Terms and/or Amendments** is hereby replaced in its entirety as follows:
- 1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
 - 2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order or Statement of Work and given effect. No additional term or condition added in a Purchase Order issued by a Customer can weaken a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer

hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.

D. Section 6. Contract Fulfillment and Promotion, A. Service, Sales and Support of the Contract is hereby replaced in its entirety as follows:

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its best efforts to ensure that potential Texas Customers are made aware of the existence of the Contract. All sales to Customers for products and services available under the Contract shall be processed through the Contract.

E. Section 6. Contract Fulfillment and Promotion, C. Product Warranty and Return Policies is hereby replaced in its entirety as follows:

Order Fulfiler will adhere to the Vendor's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive than warranty and return policies for other similarly situated Customers for like products.

F. Section 6. Contract Fulfillment and Promotion, E. Internet Access to Contract and Pricing Information, 3) Website Compliance Checks is hereby replaced in its entirety as follows:

Periodic compliance checks of the information posted for the Contract on Vendor's website will be conducted by DIR. Upon request by DIR, Vendor shall use commercially reasonable efforts to provide verifiable documentation that pricing listed upon this website is uniform with the pricing as stated in Section 4 of the Contract.

G. Section 6. Contract Fulfillment and Promotion, K. DIR Cost Avoidance is hereby replaced in its entirety as follows:

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Once each calendar year or as mutually agreed and upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of products sold under the Contract. The report shall contain: product part number, product description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR customers can procure the products.

H. Section 7. Purchase Order, Invoices, and Payments, A. Purchase Orders is hereby replaced in its entirety as follows:

All Customer Purchase Orders will be placed directly with the Order Fulfiller. Negotiated and agreed Statements of Work shall be considered incorporated into the Customer Purchase Orders, if applicable. Accurate Purchase Orders shall be effective and binding upon Order Fulfiller when accepted by Order Fulfiller.

I. Section 7. Purchase Order, Invoices, and Payments, C. Payments is hereby replaced in its entirety as follows:

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments. Any applicable payment schedule, as negotiated by the parties, will be set forth in the Statement of Work, if applicable. Any Services provided on a time and expense basis will be invoiced monthly, unless otherwise agreed in the Transaction Document.

J. Section 8. Contract Administration, A. Contract Administrator, 2) Vendor Contract Administrator is hereby replaced in its entirety as follows:

Vendor shall provide a dedicated Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between a Order Fulfiller and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Administrator if the assigned Contract Administrator is not, in the opinion of DIR, adequately serving the needs of the State. In such an event, Vendor requests thirty (30) calendar days notice.

K. Section 8. Contract Administration, B. Reporting and Administrative Fees, 2) Detailed Monthly Report is hereby replaced in its entirety as follows:

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous month period. Reports shall be submitted to the DIR Go DIRect E-Mail Box at GoDirect.Sales@dir.state.tx.us. Reports are due on the fifteenth (15th) calendar day after the close of the previous month period. It is the responsibility of Vendor to collect and compile all sales under the Contract from participating Order Fulfillers and submit one (1) monthly report. The monthly report shall include, per transaction: the detailed sales for the period, the Order Fulfiller's company name, if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by DIR and as mutually agreed by the parties. Each report must contain all

information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section.

- L. Section 8. Contract Administration, C. Records and Audit** is hereby amended to add the following:

The following requirement is subject to Chapter 321, Texas Government Code.

- M. Section 9. Vendor Responsibilities, A. Indemnification, 2) Acts or Omissions** is hereby replaced in its entirety as follows:

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES, FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- N. Section 9. Vendor Responsibilities, A. Indemnification, 2) Infringements** is hereby replaced in its entirety as follows:

a) VENDOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CUSTOMERS, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES, FROM ANY AND ALL THIRD PARTY CLAIMS, WHICH PERTAIN TO HP BRANDED PRODUCTS AND SERVICES, INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES, VENDOR-NEGOTIATED SETTLEMENT AMOUNTS, AND COURT-AWARDED DAMAGES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL FOR WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY

SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

b) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

(c) Vendor shall have no liability if the alleged infringement is caused in whole or in part by: (i) use of the product or service in combination with product or services not provided under the Contract, (ii) use of the product or service for a purpose or in a manner for which the product or service was not designed, (iii) any modification made to the product without Vendor's written approval, (iv) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (v) any intellectual property right owned by or licensed to Customer, or (vi) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

d) Vendor will transfer to Customer any third party intellectual property infringement indemnification for non-HP Branded Products, Software, and Services delivered under the Contract and transferable to Customer.

O. Section 9. Vendor Responsibilities, B. Taxes/Worker's Compensation/ UNEMPLOYMENT INSURANCE is hereby replaced in its entirety as follows:

- 1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.
- 2) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND

VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

P. Section 9. Vendor Responsibilities, C. Vendor Certifications (x) is hereby replaced in its entirety as follows:

(x) Vendor agrees that any payments due under this contract will be applied towards any debt as required by State law, including but not limited to delinquent taxes and child support that is owed to the State of Texas;

Q. Section 9. Vendor Responsibilities, I. Security of Premises, Equipment, Data and Personnel is hereby replaced in its entirety as follows:

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may terminate its Purchase Order and related Service Agreement subject to the terms of Sections 10.B.(4)(b) and 10.B.(6) of Appendix A.

R. Section 9. Vendor Responsibilities, K. Limitation of Liability is hereby replaced in its entirety as follows:

Except for Vendor's liability for claims of patent, trademark, or copyright infringement as set forth in section 9.A.(2), all other indemnifications in Section 9.A and 9.B. (Vendor Responsibilities) are subject to following limitation of liability terms:

- 1) VENDORS AGGREGATE LIABILITY TO CUSTOMER AND/OR DIR FOR ANY REASON AND UPON ALL CLAIMS OR CAUSES OF ACTION HEREUNDER WILL BE LIMITED IN THE AGGREGATE TO THE LESSER

OF: THE AMOUNT PAID TO VENDOR BY CUSTOMER AND/OR DIR UNDER THE PARTICULAR STATEMENT OF WORK OR PURCHASE ORDER TO WHICH THE CLAIMS OR CAUSES OF ACTION RELATE, OR \$1,000,000.

- 2) THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION OR CLAIMS, INCLUDING WITHOUT LIMITATION TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, AND OTHER TORTS, IN NO EVENT WILL VENDOR BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION TO LOSS OF DATA, LOSS OF USE, LOSS OF PROFITS OR LOSS OF SAVINGS OR REVENUE EVEN IF VENDOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

S. Section 9. Vendor Responsibilities. N. Required Insurance Coverage is hereby replaced in its entirety as follows:

As a condition of this Contract with DIR, Vendor shall maintain the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, maintain the insurance coverage specified herein, and shall provide a certificate of insurance evidencing coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A-VII financially rated and duly licensed, admitted, and authorized to do business in the State of Texas. With the exception of workers' compensation and employer's liability, the Customer and DIR will be included as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include a combined single limit of \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer included as an additional insured;
- d) Insurer shall endeavor to provide 30-day Notice of Termination in favor of DIR and/or Customer; and

2) Workers' Compensation Insurance

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following provisions:

- a) insurer shall endeavor to provide 30-day Notice of Termination; and
- b) Customer included as Additional Insured.

T. Section 10. Contract Enforcement, B. Termination, 6) Vendor or Order Fulfiller Rights Under Termination is replaced in its entirety as follows:

In the event a Purchase Order or corresponding Statement of Work (if applicable) expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, 2) any applicable early termination fees agreed to in such Purchase Order, and 3) any travel charges and expenses incurred by Vendor and agreed in a Purchase Order or Statement of Work.

U. Section 13. Additional Terms is hereby added in its entirety as follows:

1. Internal Use. Products and Services acquired by Customer under this Contract are solely for Customer's own internal use and not for resale or sub-licensing.
2. Title, Risk of Loss, and Acceptance. Risk of loss or damage, and title to Hardware, will pass to Customer and acceptance will occur upon delivery to the "ship to" address or, if special shipping arrangements are agreed to, upon delivery to Customer's carrier or designee. Acceptance of Technical Services will occur upon Vendor or Order Fulfiller's performance and Customers acceptance of the Technical Services. Acceptance of Deliverables occurs upon delivery and Customer's acceptance, unless otherwise specified in the relevant Statement of Work or Transaction Document.

This Contract is executed to be effective as of the date of last signature.

Hewlett-Packard Company

Authorized By: __signature on file_____

Name: Larry Singer

Title: Vice President, SLED – Enterprise Business

Date: May 5, 2010

**The State of Texas, acting by and through the
Department of Information Resources**

Authorized By: __signature on file_____

Name: Cindy Reed

Title: Deputy Executive Director
Operations & Statewide Technology Sourcing

Date: 05/05/2010

Legal: CK 05/05/2010